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BEFORE THE ARIZONA CORPORATION COMMISSION

2013 JUL 15 P 4 46

Arizona Corporation Commission

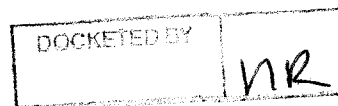
COMMISSIONERS

AZ CORP COMMISSION  
DOCKET CONTROL

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JUL 15 2013

BOB STUMP, Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH



IN THE MATTER OF THE APPLICATION OF  
DIXIE ESCALANTE RURAL ELECTRIC  
ASSOCIATION, INC. FOR A DETERMINATION  
OF THE FAIR VALUE OF ITS PROPERTY AND  
FOR AN ORDER SETTING JUST AND  
REASONABLE RATES

Docket No. E-02044A-12-0419

**PETITION FOR  
DECLARATORY ORDER**

Dixie Escalante Rural Electric Association, Inc. ("Dixie") submits this petition for a  
Declaratory Order confirming that certain Arizona statutes, namely A.R.S. §§ 40-301, 40-302,  
40-303 and 40-285, do not apply to Dixie in relation to past or future secured loan transactions.

**BACKGROUND**

1. Dixie is a non-profit cooperative corporation incorporated in Utah.
2. Dixie is a public utility subject to the jurisdiction of the Public Service  
Commission of Utah ("Utah PSC").
3. In Decision No. 49208 dated July 28, 1978, the Arizona Corporation Commission  
("Commission") granted Dixie a Certificate of Convenience and Necessity to provide electric  
utility services in Arizona.
4. In 2012, Dixie provided electric distribution service to approximately 13,500  
customers in Utah and approximately 2,200 customers in Mohave County Arizona, such that  
only about 14% of its customers are located in Arizona. See Affidavit of LaDel Laub, which is  
attached hereto as Exhibit A.

1           5.       Of the 392,573,880 kWh sold in 2012, 362,380,496 kWh (92.3%) was sold to  
2 Utah customers and 30,193,384 kWh (7.7%) was sold to Arizona customers. *Id.*

3           6.       Of the \$22,746,854 in Dixie's 2012 total electric operating revenue, \$20,869,474  
4 (91.7%) was derived from Utah consumers and \$1,877,380 (8.3%) was derived from Arizona  
5 consumers. *Id.*

6           7.       The business activities of Dixie are of a nature and character constituting  
7 interstate commerce. Specifically, Dixie's interstate business activities include:

- 8                   a. Purchasing electric energy from a generation and transmission cooperative  
9                   in Utah;
- 10                  b. Operating transmission lines and distribution facilities in Utah and  
11                  Arizona;
- 12                  c. Transmitting and distributing electric energy across state boundaries to  
13                  members/customers in Utah and Arizona; and
- 14                  d. Maintaining a headquarters in Beryl, Utah, from where it provides  
15                  administrative, accounting, and operational services to its facilities in Utah  
16                  and Arizona.

17 *Id.*

18           8.       As a nonprofit cooperative corporation, Dixie's requirement for debt financing to  
19 carry on the business of providing these interstate utility and energy services in Utah and  
20 Arizona is a very essential part of its operations. *Id.* As a member-owned cooperative, Dixie  
21 does not raise necessary capital by issuing stock.

22           9.       Dixie is financially sound and, assuming Commission approval of its current rate  
23 request, it will experience a 4.93 TIER and a 3.94 DSC on a combined Arizona and Utah basis,

1 both of which exceed loan covenant requirements. *See* Direct Testimony of Mary J. Rimback,  
2 April 23, 2013.

3 10. Dixie's debt and loan transactions are regulated by the Utah PSC.

4 11. Dixie's existing debt is provided by the National Rural Utilities Cooperative  
5 Finance Corporation ("CFC"). The CFC loan agreements contain covenants regarding Dixie's  
6 operations and financing of the business, including restrictions on the cooperative's ability to  
7 sell, lease or transfer its capital assets. *See* Exhibit A.

8 12. Dixie has a history of compliance with Commission requirements. *Id.*

9 **COMMISSION'S GARKANE DECISION**

10 13. In the Garkane Decision, Decision No. 72125, the Commission held that exercise  
11 of regulatory jurisdiction over the secured loan transactions at issue in that case would create an  
12 impermissible burden on interstate commerce in violation of the United States Constitution.

13 14. The Garkane Decision was based on facts very similar to those presented by this  
14 petition. Specifically, Garkane is a nonprofit rural electric cooperative with customers in both  
15 Utah and Arizona. Garkane has been serving Arizona customers since 1966. At the time of the  
16 Garkane Decision, it had a customer mix of 89% of its customers in Utah and 11% in Arizona.  
17 The Commission found Garkane to be financially sound with a history of compliance with  
18 Commission requirements. Finally, and importantly, Garkane is domiciled in Utah and its  
19 financial transactions are subject to the jurisdiction and approval of the Utah PSC.

20 15. In light of the Utah PSC's jurisdiction, the Commission concluded in Decision  
21 No. 72125 that requiring Arizona approval of Garkane's transactions would pose a significant  
22 potential burden of inconsistent regulation between the two state entities. Given the facts of the  
23

1 case, the Commission determined that its interest in exercising its jurisdiction under Arizona's  
2 statutes was clearly outweighed by the onerous impact on interstate commerce.

3 16. As indicated, Dixie's factual situation is quite similar to Garkane's. Dixie is a  
4 nonprofit rural electric cooperative with customers in both Utah and Arizona. Dixie has been  
5 serving Arizona customers since 1978. In 2012, Dixie had a customer mix of 86% Utah and  
6 14% Arizona and less than 10% of its electric revenues were derived from operations in Arizona.  
7 Dixie is financially sound with a history of compliance with Commission requirements. Finally,  
8 and importantly, Dixie is domiciled in Utah and its financial transactions are subject to the  
9 jurisdiction and approval of the Utah PSC.

10 17. Also similar to Garkane, Dixie stopped seeking Commission approval for its debt  
11 financings in reliance on a series of decisions in which the Commission declined jurisdiction  
12 over foreign public service corporations engaged in interstate commerce. Dixie's counsel  
13 confirmed this understanding in 2000. *See* Letter to Christopher Kempley, dated June 6, 2000,  
14 attached hereto as Exhibit B. Accordingly, the Commission should find that it was reasonable  
15 for Dixie to rely on the Commission's prior decisions and the communications with Legal  
16 Division to conclude that it did not need to obtain Commission approval of its past debt  
17 financings.

18 18. These similarities support the same conclusion reached in the Garkane Decision,  
19 namely that the Commission's interest in exercising its regulatory jurisdiction over Dixie's  
20 secured loan transactions pursuant to A.R.S. §§ 40-301, 40-302, 40-303 and 40-285 is  
21 substantially outweighed by the significant risk of inconsistent regulation and the onerous impact  
22 on interstate commerce. Therefore, the Garkane Decision supports a finding that application of  
23

1 the Arizona statutes to Dixie's past and future secured loan transactions would be  
2 constitutionally impermissible.

3 19. Finally, consistent with the Commission's ruling in the Garkane Decision, Dixie  
4 is willing to provide Commission Staff with a courtesy copy of all future financing applications  
5 along with an affidavit verifying the then-existing percentage split of its customers in Utah and  
6 Arizona.

7 WHEREFORE, Dixie requests that the Commission enter its Order confirming that  
8 A.R.S. § 40-301, *et seq.*, and A.R.S. § 40-285 are not applicable to Dixie's secured loan  
9 transactions. As to Dixie's past loans, Dixie requests that the Commission find it reasonable and  
10 appropriate to take no action in relation to them and to confirm, in that regard, that the  
11 Commission's inaction with regard to prior loans does not deem them void under Arizona  
12 statutory law.

13 RESPECTFULLY SUBMITTED this 15th day of July, 2013.

14 GALLAGHER & KENNEDY, P.A.

15  
16 By 

17 Michael M. Grant  
18 Jennifer A. Cranston  
19 2575 East Camelback Road  
20 Phoenix, Arizona 85016-9225  
21 Attorneys for Dixie Escalante Rural Electric  
22 Association, Inc.  
23  
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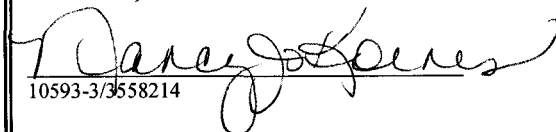
1 **Original and 13 copies** filed this  
2 15th day of July, 2013, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, Arizona 85007

7 **Copy** of the foregoing delivered  
8 this 15th day of July, 2013, to:

9 Janice Alward  
10 Chief Counsel, Legal Division  
11 Arizona Corporation Commission  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007

14 Steven M. Olea  
15 Director, Utilities Division  
16 Arizona Corporation Commission  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007

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20 10593-3/3558214

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10593-3/3558214

# **EXHIBIT A**

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Gallagher & Kennedy, P.A.  
2575 East Camelback Road  
Phoenix, Arizona 85016-9225



1           10.     Dixie's existing debt is provided by the National Rural Utilities Cooperative  
2 Finance Corporation ("CFC"). The CFC loan agreements contain covenants regarding Dixie's  
3 operations and financing of the business, including restrictions on the cooperative's ability to sell,  
4 lease or transfer its capital assets.

5           11.     Dixie generally has a history of compliance with Commission requirements.

6  
7   
8 **LaDel Laub**

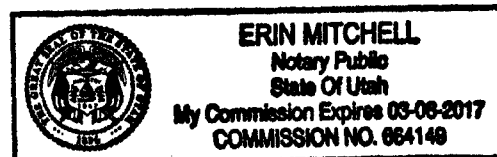
9 On this 12 day of July, 2013, before me personally appeared **LaDel Laub**, whose identity was  
10 proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to  
11 this document, and he/she voluntarily signed the above document.

12   
13 **Erin Mitchell**  
14 Notary Public

15 My Commission Expires:

16 3/04/2017

17 3612655/10593-3



## **EXHIBIT B**

**GALLAGHER & KENNEDY**

P.A.

ATTORNEYS AT LAW

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June 6, 2000

Christopher C. Kempley, Esq.  
Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Re: *Commission Jurisdiction Under A.R.S. §§ 40-285 and 40-301, et. seq. over  
Dixie-Escalante R.E.A., Inc. (Dixie-Escalante) Debt Issues*

Dear Chris:


As we discussed last week, Dixie-Escalante is a Utah non-profit cooperative corporation. Although the vast majority of its members and facilities are located in Utah, it does have some members and some facilities in Arizona.

Because Dixie-Escalante is a foreign corporation supplying power through facilities located in two states, we agreed that it is not necessary for Dixie-Escalante to seek Commission approval for its debt and lien issues. See, for example, Atty. Gen. Op. No. 69-10.

As always, your attention to this matter is appreciated.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By:   
Michael M. Grant

MMG/lmm  
cc: LaDel Laub, Dixie-Escalante  
10593-0001/844237